

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM ODESSA BROWN, II,

Petitioner,

v.

ERIC ARNOLD, Warden,<sup>1</sup>

Respondent.

Case No. [15-cv-05353-DMR](#) (PR)

**ORDER DISMISSING PETITION AS  
SUCCESSIVE**

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Dkt. 1. He has also filed an application to proceed *in forma pauperis*. Dkt. 6.

This action has been assigned to the undersigned magistrate judge. On November 23, 2015, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 3.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including entry of judgment.<sup>2</sup> Appeal will be directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3).

Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. *See* Case No. C 08-00750 CW (PR). The Honorable Claudia Wilken dismissed his previously-filed petition as untimely under 28 U.S.C. § 2244(d)—the statute of limitations set by the Antiterrorism and Effective Death Penalty Act of

<sup>1</sup> Eric Arnold, the current warden of the institution where Petitioner is being housed, has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

<sup>2</sup> A magistrate judge generally must obtain the consent of the parties to enter dispositive rulings and judgments in a civil case. *See* 28 U.S.C. § 636(c)(1). However, in cases such as this one, where the petitioner has consented but the respondent has not been served, “all parties have consented pursuant to 28 U.S.C. § 636(c)(1),” and a magistrate judge therefore “may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.” *Gaddy v. McDonald*, No. CV 11-08271 SS, 2011 WL 5515505, at \*1 n.2 (C.D. Cal. Nov. 9, 2011) (quoting § 636(c)(1)) (citing *United States v. Real Property*, 135 F.3d 1312, 1317 (9th Cir. 1995)).



1996. *See* Dkt. 19 in Case No. C 08-00750 CW (PR).

A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Here, the instant petition challenges the same conviction and sentence as the previous petition decided by this Court. In his previous habeas action, Case No. C 08-00750 CW (PR) (PR), Judge Wilken granted Respondent's motion to dismiss the petition as untimely under 28 U.S.C. § 2244(d). *See* Dkt. 19 in Case No. C 08-00750 CW (PR). The instant petition raises new claims, but Petitioner has not presented an order from the Ninth Circuit Court of Appeals authorizing the Court to consider these claims. Therefore, the Court is not authorized to consider the instant petition. Accordingly, the instant petition is DISMISSED in its entirety.

#### CONCLUSION

For the forgoing reasons, the instant petition for a writ of habeas corpus is DISMISSED as a second and successive petition. The Clerk of the Court shall close the file, terminate any pending motions as moot, and enter judgment in this matter.

Leave to proceed *in forma pauperis* is GRANTED. Dkt. 4.

This Order terminates Docket No. 4.

IT IS SO ORDERED.

Dated: January 19, 2016



DONNA M. RYU  
United States Magistrate Judge



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM ODESSA BROWN,

Plaintiff,

v.

UNKNOWN,

Defendant.

Case No. [4:15-cv-05353-DMR](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 19, 2016, I SERVED a true and correct copy(ies) of the Order Dismissing Petition as Successive, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William Odessa Brown ID: AS7822  
CSP-Solano, 15-8-4up  
P.O. Box 4000  
Vacaville, CA 95696

Dated: January 19, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
Ivy Lerma Garcia, Deputy Clerk to the  
Honorable DONNA M. RYU

United States District Court  
Northern District of California